



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)		
)		
DONNA M. SCOLES,)		
)		
Complainant,)		
)	Charge No.:	1999CN0974
and)	EEOC No.:	N/A
)	ALS No.:	10967
GRECIAN TAVERNAS and)		
BILL VELELAKOS,)		
)		
Respondents.)		

RECOMMENDED ORDER AND DECISION

On August 12, 1999, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Donna M. Scoles. That complaint alleged that Respondents, Grecian Tavernas and Bill Velelakos, sexually harassed Complainant and subjected her to a hostile working environment.

Respondents failed to answer Complainant's discovery requests, despite the fact that a motion to compel was granted. As a result, on June 5, 2000, a default order was entered against Respondents and the matter was set for a hearing on damages. Respondents did not appear at that hearing. In addition, although they were given the opportunity to file posthearing briefs and to respond to Complainant's motion for attorney's fees, Respondents did not take advantage of that opportunity. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were derived from the pleadings or were proven by a preponderance of the evidence at the public hearing held in this matter.

1. Respondent, Grecian Tavernas, hired Complainant, Donna M. Scoles on or about April 10, 1992. Grecian Tavernas is a restaurant/bar. Complainant's position was bartender.

2. Grecian Tavernas is partially owned by Respondent, Bill Velelakos. During the time Complainant worked for Grecian Tavernas, Velelakos was Complainant's supervisor.

3. Velelakos sometimes came up behind Complainant, put his hands under her shirt, and grabbed her breasts.

4. On at least several occasions, Velelakos grabbed Complainant, pushed her, hit her, touched her breasts, and pulled her back into the restaurant by her hair when she tried to leave.

5. Velelakos sometimes hid Complainant's purse or keys so she could not leave the restaurant.

6. Velelakos sometimes made harassing telephone calls to Complainant's home. Those calls occasionally continued to 5:00 or 6:00 a.m.

7. After Complainant retained counsel, Velelakos met with her, apologized to her, and asked her to drop her legal action against him. When Complainant refused to abandon her legal claims, Velelakos resumed his former course of conduct.

8. Because Velelakos's behavior made it impossible for

Complainant to work with him, Complainant resigned from her position with Grecian Tavernas on approximately May 30, 1999.

9. After leaving Grecian Tavernas, Complainant began seeing a therapist. Despite receiving a reduced rate for the therapist's help, Complainant incurred therapist bills of approximately \$1,200.00.

10. During her tenure with Grecian Tavernas, Complainant earned approximately \$26,000.00 per year.

11. Complainant should be compensated in the amount of \$25,000.00 for the emotional distress caused by Respondent.

12. Complainant is seeking attorney's fees for 64.5 hours of work at \$215.00 per hour. The requested number of hours and the requested hourly rate are reasonable.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent, Grecian Tavernas, is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Respondent, Bill Velelakos, is an "employee" as defined by section 2-101(A)(1)(a) of the Act and is subject to the provisions of the Act.

4. As a result of the order of default, the allegations of the complaint are deemed to be admitted.

5. Because of their failure to file a response to Complainant's motion for attorney's fees, Respondents have waived any objections to said motion.

DISCUSSION

Liability

Respondent, Grecian Tavernas, hired Complainant, Donna M. Scoles on or about April 10, 1992. Grecian Tavernas is a restaurant/bar, and Complainant worked there as a bartender. Grecian Tavernas is partially owned by Respondent, Bill Velelakos. During the time Complainant worked for Grecian Tavernas, Velelakos was Complainant's supervisor.

While employed by Grecian Tavernas, Complainant was subject to frequent and severe sexual harassment from Bill Velelakos. Despite Complainant's repeated protests about Velelakos's behavior, the harassment continued. Eventually, matters became so intolerable that Complainant resigned.

Complainant subsequently filed a charge against Respondents with the Illinois Department of Human Rights. After conducting an investigation, the Department filed a complaint on Complainant's behalf before the Human Rights Commission.

An attorney filed an appearance on Respondents' behalf and filed an answer to the complaint. Inexplicably, though, once that answer was filed, Respondents made no further efforts to defend themselves. They failed to respond to Complainant's discovery requests, even after a motion to compel responses was

granted by an administrative law judge. They also failed to respond to Complainant's motion for default or to appear at the hearing on said motion. In light of Respondents' failure to take actions to defend themselves, an order of default was entered.

Once an order of default is entered, the allegations of the complaint are deemed to be admitted. See **Bielecki and Illinois Family Planning Council**, 40 Ill. HRC Rep. 109 (1988). As a result, a finding of liability against both Respondents is appropriate.

Damages

Normally, the facts underlying the complaint are addressed in the liability portion of the discussion. In the instant case, though, the liability aspect was decided when the default order was entered. Despite the fact that Respondents' behavior was not critical to the liability finding, discussion of some of that behavior is necessary to the determination of an appropriate damage award.

During the time Complainant worked for Grecian Tavernas, Velelakos sometimes came up behind her, put his hands under her shirt, and grabbed her breasts. On at least several occasions, Velelakos grabbed Complainant, pushed her, hit her, touched her breasts, and pulled her back into the restaurant by her hair when she tried to leave. Velelakos sometimes hid Complainant's purse or keys so she could not leave the restaurant. Sometimes, Velelakos made harassing telephone calls to Complainant's home.

Those calls could run all night, occasionally continuing to 5:00 or 6:00 a.m.

Certainly, Velelakos must have realized how inappropriate his behavior was. After Complainant retained counsel, Velelakos met with her, apologized to her, and asked her to drop her legal action against him. When Complainant refused to abandon her legal claims, Velelakos resumed his former course of conduct. Because Velelakos's behavior made it impossible for Complainant to work with him, Complainant resigned from her position with Grecian Tavernas on approximately May 30, 1999.

A resignation is a constructive discharge if the employee's working conditions were made so difficult or unpleasant that a reasonable person in that situation would have felt compelled to resign. *Brewington v. Dep't of Corrections*, 161 Ill. App. 3d 54, 513 N.E.2d 1056 (1st Dist. 1987). Clearly, Complainant's situation meets the *Brewington* standard. Among other things, she was grabbed, groped, pushed, and hit by her supervisor. Any reasonable employee would have felt compelled to resign under those circumstances. Thus, it is appropriate to treat her resignation as a constructive discharge.

Complainant did not specifically request reinstatement in the public hearing or in her posthearing brief. If Velelakos is still part of the ownership and management of Grecian Tavernas, it would be understandable if Complainant no longer wanted anything to do with that restaurant. Nonetheless, a prevailing

complainant is presumptively entitled to reinstatement to the job lost because of a violation of the Human Rights Act. Therefore, if she desires reinstatement, she should be returned to her former position, with the pay, seniority, and benefits to which she would have been entitled if she had not left her employ with Grecian Taverna.

Complainant also is entitled to an award of backpay. At the time she left her employment with Grecian Taverna, she was earning approximately \$26,000.00 per year, or \$500.00 per week. She left her job with Grecian Taverna on or about May 30, 1999. As of the date of the public hearing, August 4, 2000, she had been gone from that job for one year and about nine and a half weeks. At her rate of pay, she would have earned \$30,750.00 during that time.

There should be a deduction from that total. As of the time of the public hearing, Complainant was working at a temporary job as a census taker.¹ She started that job on June 11, 2000, and she was earning \$15.00 per hour. There was no testimony as to how many hours per week she worked at that position, so it is assumed that she was a full-time employee. Working forty hours a week, she would have earned \$600.00 per week. Since she had been working about seven and a half weeks as of the date of the public hearing, she would have earned \$4,500.00. Subtracting that from

¹ Complainant testified that she had a previous interim job with something called Mortgage Square, but she stated that she did not earn any money in that position.

the gross backpay figure leaves a net backpay award of \$26,250.00. Because of the delay in payment of that amount, prejudgment interest should be awarded on the backpay award.

In addition to front pay, Complainant has requested ten years of front pay, but that request should be denied. Front pay is a very rare remedy in this forum, and Complainant has offered no justification for that remedy in this case. There is no indication that she is unable to work or that she will be unable to replace her former income with something comparable. On these facts, ten years of front pay would be an unjustified windfall for Complainant.

Complainant also has requested an award of not less than \$100,000.00 to compensate her for the emotional distress caused by Respondents' behavior. That amount, though, is far in excess of any emotional distress award ever made by the Human Rights Commission, and Complainant has cited no case law in support of her request.

Certainly, an award for emotional distress is justified on these facts. Unfortunately, it is difficult to gauge the amount of damages because the record is very sketchy on the effects of her distress. There was no evidence whatsoever on specific emotional symptoms.

On the other hand, there is absolutely no doubt that Complainant has been emotionally harmed. After leaving Grecian Tavernas, Complainant began seeing a therapist to help her deal

with the aftermath of that job. She testified that she still sees the therapist once or twice a month. She has visited often enough that, despite receiving a reduced rate for the therapist's help, Complainant incurred therapist bills of approximately \$1,200.00. Therapy of that duration is a convincing sign that Complainant has been emotionally harmed.

In *York and Al-Par Liquors*, ___ Ill. HRC Rep. ___, (1986CF0627, June 29, 1995), the complainant was a clerk in a convenience store. The store manager harassed her on a daily basis for approximately nine months. That harassment included touching and grabbing the complainant, as well as attempts to forcibly kiss her. Despite scarcity of evidence on the specific effects of that harassment, the Commission awarded the complainant \$12,000.00 in emotional distress damages.

Though the facts are similar, the instant case requires a larger award than the one in *York*. *York* was decided several years ago. Moreover, in that case, there was no evidence that the complainant had been forced to get professional help in order to deal with her problems. Therefore, even in the absence of evidence as to specific symptoms, it is recommended that Complainant receive an award of \$25,000.00 as emotional distress damages. That amount should be enough to compensate her for the harm demonstrated in the record. Of course, since they caused the problems which were treated by the therapist, Respondents should be required to pay \$1,200.00 for the therapist's bills.

Respondents should be ordered to clear Complainant's personnel records of any references to this action or to the underlying charge. In addition, Respondents should be ordered to cease and desist from further sexual harassment.

Finally, Complainant should be awarded her attorney's fees for prosecuting this matter. By failing to respond to Complainant's motion for fees, Respondents have waived the issue of such fees. ***Mazzamuro and Titan Security, Ltd.***, ___ Ill. HRC Rep. ___, (1989CN3464, October 21, 1991).

Even if the issue had not been waived, the fee request is not unreasonable. Complainant was represented in this matter by attorney Carey M. Stein. She is seeking attorney's fees for 64.5 hours of Mr. Stein's work at \$215.00 per hour. Given Mr. Stein's experience and the work done, the requested number of hours and the requested hourly rate are reasonable. The total recommended attorney's fee award is \$13,867.50.

RECOMMENDATION

Based upon the foregoing, the record establishes that Respondents sexually harassed Complainant and that Complainant was constructively discharged as a result of that harassment. Accordingly, it is recommended that the complaint in this matter be sustained and that an order be entered awarding the following relief:

A. That, if Complainant desires reinstatement, Respondents be ordered to reinstate her to her previous position, with her

pay, seniority, and benefits to be the same as they would have been if she had never left Respondents' employ;

B. That Respondents pay to Complainant the sum of \$26,250.00 for lost backpay;

C. That Respondents pay prejudgment interest on the backpay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

D. That Respondents pay to Complainant the sum of \$25,000.00 as compensation for the emotional distress suffered by Complainant as a result of Respondents' actions;

E. That Respondents pay to Complainant the sum of \$1,200.00 as reimbursement for therapist's bills incurred by Complainant as a result of Respondents' actions;

F. That Respondents pay to Complainant the sum of \$13,867.50 for attorney's fees reasonably incurred in the prosecution of this matter;

G. That Respondents clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

H. That Respondents cease and desist from further sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 27, 2001